IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 382

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC.

Respondent.

REPLY BRIEF FOR PETITIONER, IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico.

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.

Rufus H. Darby Printing Co., Washington, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC.

Respondent.

REPLY BRIEF FOR PETITIONER, IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

The "Brief of Respondent in Opposition" makes no effective answer to the Petition for Certiorari and Supporting Brief. Respondent's brief is largely an attempt to support the majority opinion of the Circuit Court of Appeals by propositions which respondent unsuccessfully submitted to the Circuit Court of Appeals as well as to the insular Supreme Court, and upon which the Circuit Court of Appeals did not go along with it.

I.

A. Respondent says, referring to the provisions added to the later clauses of Sections 2 and 6 of the Puerto Rican *Quo Warranto* Law by Act No. 47 of the Special Session of 1935,—contemplating that, under certain cir-

cumstances, if the insular government shall have so "chosen",[1] the lands of offending corporations may be confiscated in extreme cases,—that those provisions are, —[or would be, if they should be applied in the present case],—*ex post facto;* because this corporation acquired its lands in excess of five hundred acres prior to the enactment of that amendatory statute No. 47 in 1935; and that, therefore, the statute is invalid, because, in the absence of any express "separability clause", such invalidity of this *ex post facto* provision invalidates the entire statute.

B. Respondent itself points out (*Brief*, p. 3) that it invited the attention of the Circuit Court of Appeals to this contention, both by its assignments of error in that court (R. 309) and by argument there. But the Circuit Court of Appeals ignored the contention; did not go along with the respondent in this respect.

C. Respondent, however, now thinks that that part of the majority opinion of the Circuit Court of Appeals holding[2] [R. 328; *confer* Petition for Certiorari, "Questions Presented * * Fourth", p. 10; and Supporting Brief, pp. 60-62] that the insular government "should not be permitted to forfeit lands for past violations which it has winked at and condoned", may be explained on the theory that (*Brief*, p. 17):

> "The Circuit Court of Appeals obviously felt that an intending forfeiture (confiscation or alienation of Respondent's land) was contemplated and expressed the opinion that in view of its long tolerance of the violations which Act No. 47 makes a ground of confiscation Petitioner should not be permitted to confiscate the land of defendant corporations under the

[1] "and when * * the People of Puerto Rico has chosen to confiscate it or orders it sold at public auction"; next to the last stence of Section 6 as amended by Act No. 47; Appendix to Petition for Certiorari, p. 76.

[2] Which the respondent does not attempt directly to defend.

provisions of Act No. 47 for violations occurring prior to the passage of that Act; in other words, that the penalty of confiscation should not operate retroactively."

D. No reply to this seems necessary. It seems hardly necessary to point out that, if the insular government had "chosen" to confiscate this respondent corporation's lands under that provision of the statute, it would have been necessary for the government to set up, by proper allegations [either in this proceeding or in some other proceeding], that it had so "chosen", and to ask for a decree of confiscation on that basis, and thus to submit the matter to the court for decision; and that, of course, in any such proceeding the respondent corporation would have been entitled to its day in court, and to its opportunity to combat the government's claim of right to have so "chosen" to confiscate the land.

And, in such a case, the corporation would have the opportunity, among other things, if it so desired, to set up [and to be heard upon] its contention that, with regard to its lands purchased prior to 1935, the application of those provisions of that statute would be in the nature of an *ex post facto* proceeding.

E. BUT NONE OF THOSE QUESTIONS IS HERE. The government has not so "chosen" to confiscate this corporation's lands. No such allegation is in the complaint here. Accordingly, the Circuit Court of Appeals, like the insular Supreme Court, ignored this contention of the respondent.

And there is no basis for respondent's present theory in its brief, as above quoted, that that contention is the explanation of what the Circuit Court of Appeals [erroneously] said as to a supposed estoppel of the insular government; or that what the Circuit Court said on this subject was based, in any way, on respondent's contention in this respect.

In any event, even if that *ex post facto* theory

were here upon this record [*which it is not*], there are two answers:

FIRST. *Even if respondent's argument were sound, it would not go to the extent of invalidating the statute.* That is not the effect of the finding, in an ordinary case, that a penal statute has been enacted after the commission of a particular offense charged against a particular defendant, and that it is, therefore, not applicable to that offense. For example, if, in a State where there is no capital punishment for murder, the legislature should change the law and provide capital punishment for that offense, then the fact that the penalty of capital punishment could not be imposed for a murder committed prior to the enactment of the new law, for which the offender might be brought to trial thereafter,—[because, manifestly, if applied to that offense, it would be in the nature of an *ex post facto* application of the law],—would not at all invalidate the statute. It would merely mean that the new statute is not applicable to offenses committed before its enactment. So here; even if, for the purposes of the argument, respondent's contention on this point were to be conceded to be sound. But

SECOND. *In any event the argument is not applicable in favor of this respondent in this case.* As is pointed out in Point XIX (pp. 61-62) of the Supporting Brief to our Petition for Certiorari here, this respondent corporation appears to be *still violating the statute*; still violating the restriction contained in its own Articles of Incorporation; and intending actively to continue its violations.

The prohibitions, both of the federal legislation and of this corporation's own Articles of Incorporation, are not directed simply at the fact of its having purchased the land at some time in the past; but are directed, equally, at its continuing, while engaged in agriculture, to hold and to control this great tract of land, and to use it for agricultural purposes. *These are present violations* of the stat-

utes, and of its own Articles, committed and continuing to be committed *since the date of the enactment of Act No. 47 in 1935.* There is here no disclaimer; no statement of any purpose to discontinue the violations; no application to the court for clemency on any such ground. In so far as the violations have continued since the date of the enactment of Act No. 47, and still continue, there is no ground for respondent's *ex post facto* argument.

G. Respondent complains (*Brief*, pp. 2-3, 12-13) of the filing of *lis pendens* notices with the local Registrars of Property, and that the insular Supreme Court did not consider in this proceeding the respondent corporation's motion to direct their cancelation; and respondent seems to consider that as being some ground for sustaining the judgment of the Circuit Court of Appeals here. But that question is not in this case at all, on this record. Respondent could not raise it upon its demurrer to the complaint which does not mention that subject (R. 2-5, 44-47). As was properly pointed out in the Attorney General's answer (R. 65) to the respondent's motion in the insular Supreme Court for the cancelation of these notices,

> "III. The defendant has an adequate and proper remedy by requesting the cancelation of the aforesaid notices *in the district court.*" (*Italics supplied*)

Had the respondent so desired, it could have raised this question by direct proceedings in the District Court, from which it could have appealed in regular course, in case it should have felt itself aggrieved by the decision of that court.

But no question relating to the *lis pendens* notices, or to their possible effect, is here in this case; or can have any bearing here. The Circuit Court of Appeals properly ignored respondent's contention in this respect.

II.

Respondent says (*Brief*, pp. 4, 9) that these Acts Nos. 33 and 47 of 1935 offend against the provisions of Section 34 of the Organic Act for Puerto Rico as to title, and as to amending prior acts of the Legislature.

A. As respondent itself says (*Brief*, pp. 2, 3), the respondent raised this question by its assignments of error in the Court of Appeals and argued it there. But that court ignored it; although, in stating the case (*Majority Opinion*, R. 320), it noted the fact that the respondent corporation was making that contention. In other words, in effect, it agreed with the insular Supreme Court in overruling respondent on this point.

B. *The contention is unsound in any event.* These statutes do not offend against these provisions of the Organic Act.

FIRST. The titles are sufficient. Each of them "*states a single main object*;[4] and is fully sufficient to guard against the evil confusion prohibited by the Organic Act" (*Gallardo* vs. *Porto Rico Ry. Light & Power Co.*, 18 F. (2d) 918, 922), the aim being "to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and

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[3] Organic Act, Sec. 34, Pars. 8 and 9, c. 145, 39 Stat. 951, 962:

"No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed.

"No law shall be revived, or amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length."

[4] *Italics supplied.*

fraud in legislation." (*Posados, Collector, vs. Warner, Barnes & Co.*, 279 U. S. 340, 344).

SECOND. As to the respondent's contention (*Brief*, p. 9) that these provisions of Section 34 of the Organic Act prevent the Legislature of Puerto Rico from "adopting by reference"[5] the federal joint resolution [the 500-acre law], manifestly the respondent is mistaken. Respondent cites no authority in support of this contention. Plainly, on its face, paragraph 9 of Section 34 [Footnote 3, *ante*, p. 6] *relates simply to reenactment or amendment of former acts of the Legislature itself.* The Congress did not intend to prevent the Legislature from referring to the underlying legislation of the Congress, which is a part of the "supreme Law of the Land" in the Island [Const. Art. VI, Sec. 2; which the Legislature could not change] *as boundary stones*, or from thus adopting it by reference as a part of its own local legislation. [*Confer Points VI and VII*, pp. 32-37, *Supporting Brief to the Petition for Certiorari.*]

The Circuit Court of Appeals was right in ignoring this contention of the respondent.

III.

Respondent attempts to evade the "THIRD" question presented in the Petition for Certiorari (*Petition*, pp. 9-10, *and Supporting Brief*, "Fifth", Points XIV and XV, pp. 52-58) concerning the error of the Court of Appeals in reversing the Supreme Court of Puerto Rico on the ground of supposed insufficiency of the allegations of the complaint to charge violation of the local insular statutes.

A. The correctness of our position in this respect is emphasized by the decision of this court January 2, 1940, [since the petition for certiorari was filed in the present

[5] Petition for Certiorari, Supporting Brief, Points VI and VII, pp. 32-37.

case] in *Rafael Sancho Bonet, Treasurer of Puerto Rico* vs. *The Texas Company*, No. 132 at the present term of this Court, emphatically restating (at pp. 5-7 of the opinion) the established rule of the respect to be accorded to a decision of the local Supreme Court of Puerto Rico interpreting and applying local statutes and rules of procedure.

B. Respondent now seeks to evade the application of that rule to this case by claiming (*Brief*, pp. 5-6) that the Supreme Court of Puerto Rico did not in reality treat the allegations of the complaint as sufficiently charging violation of the local statutes, and that, indeed (*Brief*, pp. 5-6),

> "It was never suggested in the Supreme Court of Puerto Rico that the amended complaint set out as a ground for *quo warranto* that Respondent was violating a statute of Puerto Rico, nor did the Supreme Court of Puerto Rico at any time hold that the amended complaint charged the violation of any statute of Puerto Rico, and finally the judgment of the Supreme Court of Puerto Rico in this case was not based upon a finding that the Respondent had violated a statute of Puerto Rico."

C. But (1) the record shows that the Supreme Court of Puerto Rico *did specifically* base its judgment in part upon its finding (R. 304, 305),

> "that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land in violation of * * * its own articles of incorporation, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres";

and (2) the Circuit Court of Appeals itself finds [*Majority Opinion*, R. 327] that: "The judgment of the insular Supreme Court was based in part on these allega-

tions" that the "local law of Puerto Rico had been violated"[6].

D. Plainly, the insular Supreme Court's finding that this corporation's holding of 12,188 acres of land was "*in violation of * * its own articles of incorporation*" was *necessarily a finding of its violation of the local laws.* The local corporation law of March 1, 1902,[7] reenacted without change in this respect in 1911, and in force ever since,[8] states (Secs. 1 and 2) for what objects private corporations may be organized, and (Sec. 3) their powers, with the *proviso*, however (Sec. 3, Par. 4),

> "That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States of May first, nineteen hundred";

that every corporation may (Sec. 3, Par. 8) "*possess and exercise, subject to the restrictions* and liabilities *contained in this act and in* the Civil Code *and its articles of incorporation* such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are *not inappropriate to or inconsistent with such articles of incorporation* * * *"; and further that (Sec. 4):

> "No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section."

[6] But proceeds to hold (R. 329) that the allegation of violation of the local law was "too indefinite", and to overrule the local Supreme Court on that ground. [*Brief in Support of Petition for Certiorari*, pp. 52-58].

[7] Twenty-five years before this corporation's organization in 1927.

[8] Petition for certiorari, Appendix, pp. 70-74.

Necessarily, therefore, the insular Supreme Court's finding that this corporation "engaged in agriculture" was holding this great tract of land, "in violation of * * * its own Articles of Incorporation", was a direct finding of its violation of this local corporation law under which it was organized.

And the local *quo warranto* law, from its first enactment on March 1, 1902 (the same date as the enactment of the local corporation law) has carried the provision:[9]

> "Sec. 2. That in case * * any corporation * * * * exercises rights not conferred by law",

it is liable to *quo warranto* proceedings for its dissolution.

IV.

Respondent says (*Brief*, p. 11):

> "* * * by Acts Nos. 33 and 47 the Legislature of Puerto Rico changes or attempts to change a law *addressed to it*, and limiting its legislative power *into a law addressed to corporations.*" (*Italics supplied*)

This is a restatement by respondent of the statement in the majority opinion of the Court of Appeals that (R. 325):

> "The limitation of the Joint Resolution of Congress is on the powers of the Legislature. Act No. 33 converts it into a limitation on the powers of corporations."

A. **Neither the Court's opinion nor the respondent cites any authority** for this bald statement of the supposed limited character of this Act of Congress, the Joint Resolution of May 1, 1900. The contention is clearly erroneous.

B. Joint Resolution No. 23, of May 1, 1900, like every other Act of Congress relating to the Territories, was en-

[9] Petition for Certiorari, Appendix, p. 68; provision reenacted in Act No. 47 of August 7, 1935, Sec. 2, Petition for Certiorari, Appendix, p. 75.

acted in the exercise of the plenary power of the Congress under Article IV, Section 3, clause 2 of the Constitution; and is the "supreme Law of the Land" in the Island (Const., Art. VI, Sec. 2[10]), binding directly, of its own force, not only on the Legislature, but likewise on every other branch of the insular government, and necessarily entering into and forming a part of every act of the Legislature. It therefore necessarily, of its own force, automatically entered into and became a part of the local Corporation Law enacted by the Legislature, and likewise of the articles of incorporation of every corporation chartered under that law, or under any authority from the Legislature,—and hence, of the Articles of Incorporation of this respondent company,—even aside from the express adoption of it by the Legislature in the *proviso* to Paragraph 4 of Section 3 of the Corporation Law (*ante*, p. 9).

C. *The wording of the Joint Resolution itself* [J. R. No. 23, Sec. 3, 31 Stat. 715, 716] *indicates that it is intended to be addressed,* not only to the Legislature, or to the Legislature alone, but likewise, like every public law, to the entire insular government and to the public generally, and *particularly to the corporations themselves.* It says:

(a) "That all franchises * * * shall provide that the same shall be subject to amendment, alteration, or repeal".

(b) "* * * shall forbid the issue of stock or bonds, except in exchange for actual cash, * * *".

(c) "No corporation shall be authorized to conduct the business of buying and selling real estate".

(d) "No corporation shall * * * be permitted to hold or own real estate except * * *."

(e) "and every corporation hereafter authorized to engage in agriculture shall by its charter be re-

[10] Petition for Certiorari, Supporting Brief, p. 23.

stricted to the ownership and control of not to exceed five hundred acres of land".

(f) "and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture."

(g) "Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving the title".

(h) "Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable".

V.

"Courts of the United States"

A. Respondent cites (*Brief*, p. 11) *Good* v. *Martin*, 95 U. S. 90, 98, and *Clinton* v. *Englebrecht*, 13 Wall. 434, 447, that the Territorial Supreme Courts, such as the Supreme Court of Puerto Rico, are not constitutional courts of the United States clothed with the "judicial Power" of the Union under Article III of the Constitution.

B. Of course they are not; but that does not at all militate against what is said in Point IV, pp. 28-31, of our Brief in Support of the Petition for Certiorari here, where that underlying principle is fully recognized.

C. But, as is there said, the so-called federal district court for Puerto Rico is no more a constitutional court of the United States, under Article III of the Constitution, than is the insular Supreme Court or the other insular courts. There is nothing in Section 41 of the Organic Act [11] debarring the insular courts of the Island, sitting under the authority of the Congress under the same Act [Or-

[11] Act of March 3, 1917, c. 145, Sec. 41, 39 Stat. 951, 965.

ganic Act, Sec. 40] from taking jurisdiction of any question that may come before them in the interpretation of any part of the whole body of the law of the Island existing under the authority of the sovereignty of the United States, whether enacted directly by the Congress itself as the "supreme legislature" for the Island, or by the local Legislature by its delegated authority as the local agent of the Congress [or, indeed, by a municipal council, or by way or rules or regulations by the Public Service Commission, or the Treasurer, or other local authority], all alike resting upon the authority of the Congress and forming the one single body of the law of the Island, all enacted by the one authority of the Congress, either by its own direct action or by authority delegated by it.[12]

VI

Other matters set up in the respondent's brief are believed to be sufficiently covered by what we have said in the Petition for Certiorari and the Supporting Brief.

VII

Respondent's brief does not seriously question the public importance of the questions presented in this case, nor the "Reasons for Granting the Writ" stated in the Petition for Certiorari (*Petition*, pp. 16-18).

CONCLUSION

For the reasons stated in our original Petition for Certiorari as well as in the Supporting Brief and in this Reply Brief, it is believed plain that the decision of the

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[12] Respondent apparently [*erroneously*] assumes that there are two separate bodies of the law in a Territory, such as Puerto Rico, as there are in a sovereign State of the Union. But of course that is not the case. *People of Puerto Rico* vs. *Shell Co.*, 302 U. S. 253, 264-266.

majority judges of the Circuit Court of Appeals, reversing the judgment or decree of the insular Supreme Court, was wrong; that the writ of certiorari should be granted; and that the judgment of the Circuit Court of Appeals should be reversed, and that of the Supreme Court of Puerto Rico affirmed.

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,
Of Counsel.